

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY
NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

DEC -5 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ADAM RAMOS,

Appellant.

)
)
) 2 CA-CR 2008-0192
) DEPARTMENT A
)
)

MEMORANDUM DECISION

) Not for Publication
)
) Rule 111, Rules of
) the Supreme Court
)
)
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054345

Honorable Stephen C. Villarreal, Judge

DISMISSED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Laura P. Chiasson

Tucson
Attorneys for Appellee

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B R A M M E R, Judge.

¶1 After a jury trial conducted in his absence, appellant Adam Ramos was convicted of two counts of aggravated driving under the influence of an intoxicant (DUI) and aggravated driving with an alcohol concentration of .08 or more. On appeal, Ramos contends the trial court erred in denying his “motion for new trial.” Because we lack jurisdiction over his appeal, we dismiss it.

Factual and Procedural Background

¶2 We view the facts generally in the light most favorable to sustaining Ramos’s convictions, *see State v. Hamblin*, 217 Ariz. 481, ¶ 2, 176 P.3d 49, 50 (App. 2008), but relate only the procedural facts relevant to our disposition of this appeal. In October 2005, a grand jury charged Ramos with two counts of aggravated DUI. After a two-day trial in February 2007, a jury found him guilty of both charges. After his subsequent arrest, Ramos filed a motion denominated as one for a new trial in April 2008, in which he argued the trial court had violated his constitutional rights by conducting the trial in his absence. The court denied Ramos’s motion after a hearing. Three days after denying the motion, the court entered its judgment of conviction and sentenced Ramos to prison for concurrent, presumptive, ten-year terms. This appeal followed.

Discussion

¶3 Ramos asserts as the sole issue on appeal that the trial court erred in denying his motion for a new trial. Although the state does not contest our jurisdiction over Ramos’s appeal, jurisdiction can neither be waived nor conferred by agreement, and we have an independent duty to determine whether we have jurisdiction over an appeal before reaching

the merits. *See State v. Avila*, 147 Ariz. 330, 333-34, 710 P.2d 440, 443-44 (1985). Because appellate jurisdiction is derivative, if the trial court lacked jurisdiction to consider a motion, we have no jurisdiction over an appeal from its decision on that motion. *See Ex parte Coone*, 67 Ariz. 299, 304, 195 P.2d 149, 152 (1948); *cf. Webb v. Charles*, 125 Ariz. 558, 561, 611 P.2d 562, 565 (App. 1980). When we lack jurisdiction over an appeal, we must dismiss it. *See State v. Celaya*, 213 Ariz. 282, ¶ 7, 141 P.3d 762, 763 (App. 2006); *cf. McHazlett v. Otis Eng'g Corp.*, 133 Ariz. 530, 533, 652 P.2d 1377, 1380 (1982) (“If a lower court has no jurisdiction to issue an order[,], an appeal from that order gives the appellate court no jurisdiction except to dismiss the appeal.”). The existence of jurisdiction is a question of law, which we review de novo. *See State v. Flores*, 218 Ariz. 407, ¶ 6, 188 P.3d 706, 709 (App. 2008).

¶4 A motion for a new trial must be filed no later than ten days after the verdict. *See Ariz. R. Crim. P. 24.1(b)*. As noted above, Ramos’s “Motion for New Trial” was filed fourteen months after his jury had returned its verdicts. A trial court has no jurisdiction to consider a motion untimely filed pursuant to Rule 24.1. *See, e.g., State v. McCrimmon*, 187 Ariz. 169, 172, 927 P.2d 1298, 1301 (1996); *State v. Hill*, 85 Ariz. 49, 53-54, 330 P.2d 1088, 1090-91 (1958) (discussing and rejecting untimely motion for new trial made under predecessor to Rule 24.1); *see also Ariz. R. Crim. P. 24.1(b) cmt.*

¶5 As the state points out, however, Ramos had, in fact, presented a motion to vacate the judgment because he cited and relied upon only Rule 24.2 in the memorandum in support of his motion. *See Ariz. R. Crim. P. 24.2(a)(3)* (court may vacate judgment when

“the conviction was obtained in violation of the United States or Arizona Constitutions”). Rule 24.2(a) requires that a defendant file such a motion “no later than 60 days after the entry of judgment and sentence but before the defendant’s appeal, if any, is perfected.” Ramos, however, filed his motion, and the trial court ruled on it, before the judgment of conviction and sentence had been entered. A defendant may not proceed under Rule 24.2 when, as here, “a judgment of conviction and sentence ha[s] not yet been entered.” *State v. Saenz*, 197 Ariz. 487, ¶ 6, 4 P.3d 1030, 1032 (App. 2000). A trial court, moreover, “d[oes] not have jurisdiction” to hear or consider a premature motion to vacate the judgment under Rule 24.2 before it has entered judgment and imposed sentence. *State v. Hickie*, 129 Ariz. 330, 332, 631 P.2d 112, 114 (1981).

¶6 Because there is no valid trial court ruling on either a motion for a new trial or a motion to vacate judgment from which Ramos can appeal, we dismiss the appeal for lack of jurisdiction.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge